IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10718 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARESHKUMAR BABULAL KADIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10718 of 2004

MR RK MISHRA for Petitioner No. 1

MR LB DABHI, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 22/02/2005

ORAL JUDGEMENT

Rule. Learned AGP Mr.Dabhi waives service of notice of rule on behalf of the respondents. At the joint request of the learned advocates appearing for the

parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioner has challenged his termination by oral order passed by the respondents. Though prayers have also been made with respect to regularization of the services of the petitioner, learned counsel for the petitioner does not press for the same. The present petition is therefore confined to the question of legality of the termination of services of the petitioner.

3. The petitioner was working as a water-bearer with the respondents since 1997. His services came to be terminated by an oral order dated 5.8.04. It is the contention of the petitioner that the services could not have been terminated without following any procedure whatsoever.

4. The respondents have filed affidavit in reply contending, inter alia, that the services of the petitioner were not found satisfactory and despite several oral warnings, the petitioner failed to discharge his duties diligently and sincerely and that therefore his services came to be terminated with effect from 5.8.04.

5. From the above, it can be seen that the services were terminated by an oral order. No memo or notice has been issued to the petitioner. None is produced before this Court. In the reply also it is stated that oral warnings were issued. Thus the services of the petitioner who was discharging his duties since 1997 came to be terminated by an oral order on 5.8.04 without following any procedure whatsoever. The basis for passing the order of termination was unsatisfactory services of the petitioner. Though the petitioner was engaged as a daily wager, he had continued to work from 1997 till 2004. His services could not have been terminated on the ground of unsatisfactory service without following even the semblance of procedure and giving the bare minimum opportunity of hearing. Even the so called warnings and opportunities are not in writing or on record. Under the circumstances, I am unable to uphold the action of the respondents in terminating the services of the petitioner.

6. In the result, the oral termination of the petitioner is set aside. He is directed to be reinstated in service with 50 per cent backwages, in the facts of the present case. I make it clear that the termination

is set aside only on the ground of not giving reasonable opportunity of being heard to the petitioner before passing the order of termination on the ground of unsatisfactory work. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)
(vjn)